

## SPECIAL COUNCIL MEETING

FEBRUARY 7, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Friday, February 7, 2014 at 8:38 a.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock, Sr.  
Honorable Gary L. Hooser  
Honorable Ross Kagawa (*present at 8:40 a.m.*)  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

Excused: Honorable Mel Rapozo

Recused: Honorable Tim Bynum

Chair Furfaro: We have one item scheduled today, but I will take the time for three (3) minutes of testimony from each individual who wishes to speak. If there is only one item on the agenda to speak on, I think we can fairly ask if we have anyone signed up.

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: We currently have two (2) registered speakers.

Chair Furfaro: Okay. Is there anyone else who wishes to speak? We have five (5) registered speakers. I will take Public Comment first before we read the item.

### PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: Again, I want to make sure that I am not going to exercise the Council Rule 13(e) because I will allow those who have signed up to speak up to six (6) minutes, and the Rule only allows you to speak up to three (3) minutes. Is there anyone that would like to challenge that Rule? No one, okay. Let us have our first speaker then.

Ms. Fountain-Tanigawa: This is for ES-700. Would you like me to read the Executive Session item?

Chair Furfaro: Yes.

EXECUTIVE SESSION:

ES-700 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this Executive Session is to provide the Council with a briefing and request for authority to settle Tim Bynum vs. County of Kaua'i, et al., Civil No. 12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: May the first speaker come up please?

Ms. Fountain-Tanigawa: The first registered speaker is Glenn Mickens, followed by Ken Taylor. Chair, before we take public testimony, can we get an approval of the agenda first?

Chair Furfaro: Yes. I am very sorry.

APPROVAL OF AGENDA.

Ms. Yukimura moved for approval of the agenda, as circulated, seconded by Mr. Chock, and carried by a vote of 4:0:2:1 (*Mr. Kagawa was not present, Mr. Rapozo was excused, and Mr. Bynum was recused*).

Chair Furfaro: Thank you. Let the record reflect that Mr. Kagawa is now present. Glenn, go ahead.

(*Mr. Kagawa is noted as present in the meeting at 8:40 a.m.*)

There being no objections, the rules were suspended.

GLENN MICKENS: Good morning, Councilmembers. For the record, Glenn Mickens. You have a copy of my testimony. As my dear friend Ray Chuan used to say, "My purpose of being here to testify is to support for what is right and just, morally and ethically, for the people of Kaua'i." I attended most of the Council and Committee meetings while Ms. Carvalho was a member of the Council and, in my opinion, her goal was to continually represent the public, not voting on an issue for its political outcome to get reelected, but to vote "yes" or "no" because it benefitted the citizens of Kaua'i. As our County Prosecutor, she was extremely effective and won ninety-seven percent (97%) of her cases; one of the highest ever achieved. In the sentences she advocated for, she always considered the impacts on families and the community in balance with the safety of the community. She always had hope for the betterment of individuals in providing unique programs to help first-time, non-violent offenders to avoid prison terms and lifetime criminal records, in exchange for providing services to our elderly and those less fortunate. Despite her maverick efforts, because of personal agendas by certain Councilmembers, her programs faced unwarranted scrutiny like no other agency and hours of wasted time and resources by County Staff, and as a result, many individuals who could benefit lost. After looking back on the numerous meetings I have attended, there appears to be a pattern in the way our government is run where the person who does their job like Ms. Carvalho, our Police Chief Perry, and our County Auditor Ernie Pasion are being criticized, punished, and even threatened with job loss for having honesty and integrity in their performance. We desperately need people like these in our government to reestablish trust and

confidence with our citizens, as the people I talk to are very unhappy with what is going on now. I thank you for your time.

Chair Furfaro:

Thank you, Glenn. Next speaker.

KEN TAYLOR: Good morning Chair and members of the Council, my name is Ken Taylor. This agenda item to seek authority for a settlement contradicts Mr. Bynum's statement. I quote his press release, "Through the Civil action being taken, I look forward to demonstrating how baseless and without merit the actions against me were. More importantly, my hope is that holding these individuals responsible will help prevent abuse of others and insure that this kind of deliberate mistreatment does not happen again." Please Council, give Tim Bynum what he has asked for; a trial to hold her responsible for his claims of her atrocious acts. The citizens are horrified that a County Councilmember whose support is supposed to be working in the best interest of the County files a suit against a Department Head, and now wants to settle the lawsuit the day before six (6) Motions to Dismiss will be heard. Mr. Bynum, put your money where your mouth is. You gave the big talk, now take the walk, and back up your allegations. Please Council, vote against any settlement and demand a trial so the public will hear the true facts instead of the sensationalism and false statements given to the media. Thank you.

Chair Furfaro:  
you are next.

Anyone have a question for Ken? If not, Joe,

JOE ROSA: Good morning members of the Council. For the record, Joe Rosa. I am here to say my testimony on behalf of the issue. I have known Shaylene when she served effectively on the Council and when she stood her grounds on her merit of the agenda item. She was one that would make a complete decision and thoroughly did her homework and research before she put herself into action. She was one that got results. When she took over the Prosecuting Attorney's job, she was one that proved she was doing her job in her position that was created because in the papers, they had so many cases come up; yet, she was given a rating that she had, as far as convictions, ninety-seven percent (97%). Who can be wrong when they do things that have to do with the law at ninety-seven percent (97%)? She proved that she knew her job and she was not afraid to have those people taken off the streets so that citizens could stay at home and do things freely without being worried of who is out there. Those are the freedoms we have and yet, the criminals roam free and the homeowners have to stay home and guard their properties. That is not wrong. That is not the typical America that I knew when I was young and growing up. Again, it seemed that there was a conspiracy to get her out of the Office in the end too. All in all, do not let personalities become involved again because all kinds of personalities have been getting this County into a lot of problems because there was no "just cause." Personalities— do what the person deserves. I think she deserves merit and honor because as I say, anything over seventy-five percent (75%) is very good; ninety-seven percent (97%) is excellent. A ninety-seven percent (97%) conviction proved that she was in that office doing her job, not only being like some other fat cat in the office. In closing, I would like to say that she did a good job and I do not see any wrong in it, so I do not see why the County Council should be voting on a settlement.

Chair Furfaro:

Joe, that was your three (3) minutes.

Mr. Rosa: Thank you. I will wrap it up, Jay. She deserves no settlement by way of the County for what she was smeared in the

media for. This should be given a court case and let the public know the facts. I thank you.

Chair Furfaro: Thank you.

Ms. Fountain-Tanigawa: Council Chair, the next speaker is Shaylene Iseri.

SHAYLENE ISERI: *Aloha* and good morning.

Chair Furfaro: Shay, I am going to give you the whole six (6) minutes at one time. Even if the bell comes up...

Ms. Iseri: Okay. I appreciate that. I do not know if I am going to take my whole six (6) minutes, but I appreciate that time. Shaylene Iseri, for the record. The agenda item actually came as a surprise to me. I had been keeping track of all of the items that had been coming up regarding this matter and it was a surprise that Friday, a Special Council Meeting was set regarding any settlement authority. That was the first time I had heard that the Council had wind of any settlement authority. I had actually called to inquire because I was aware that it had been almost two (2) weeks that the insurance company, the Plaintiffs Attorney, and alongside with the County Attorney had been trying to negotiate a settlement without any approval from this body. When I looked at the actual agenda item, it appears that there is a request to provide a briefing, but a request for authority to settle, which I wanted to obtain information whether or not the contract... that cannot be three (3) minutes...

Chair Furfaro: No, please continue.

Ms. Iseri: Time sure flies when you are having... not fun... but in any event, getting back to the topic— with a briefing and request for authority to settle, and this is surprising to me because I had sat on the Council numerous times and was involved in many settlements, and it had always been the prior case where the Council would have the final authority on the matter. In fact, I spoke with Bob Katz and he informed me that to his knowledge, the contract did allow the insurance company to settle without any input from the County Council. I would like to hear that clarification if the Councilmembers could answer that question because I find that highly suspicious that the Council would give away its Charter power in a contract to allow the insurance company a sole discretion to settle a matter of significant importance, such as this. We are well aware that the amount of moneys have been spent on this case— I believe it is almost up to three quarters of a million dollars (\$750,000), and that is clearly outrageous for the taxpayers to come up with that kind of money when this case, on the eve of potentially a disposition on the matter of it getting dismissed, will be considering any type of settlement. It is offensive to the people who desire to know the truth. The truth be told— a lot of people say that there has always been animosity between Mr. Bynum and I, but in fact, I actually find a lot of common ground with a lot of the statements he (inaudible). As you know, he and his Attorney took it upon themselves to go to numerous media outlets and it was also on the Hawai'i news where they made huge allegations about malicious prosecution, abuse of power, civil rights violations, and all of these high-tech terms that evoke emotions from the people that were totally unwarranted. We have had thousands and thousands of pages of documents. I have read through every single transcript that has been prepared. I have read through all of the motions. There were numerous witnesses that were called. I ask each one of you, and I know Mr. Chock is the newest

member here, but how much time have any of you spent in looking through all of those documents and all of the moneys after all of the taxpayers' moneys have been spent for these Attorneys, including my own moneys that have been spent? Mr. Bynum talks about how this has had an impact on his family. Well, this has also had an impact on my family. I also have two (2) young children who had to live through the wrath of these false charges and I would like to see that these charges are addressed in a court or even at the Motion to Dismiss. Again, highly suspicious that on the eve of the day of the hearing on a Motion to Dismiss that this Council holds a Special Council Meeting to decide the fate of a settlement. Clearly, I have spoken with my Attorneys and all have been consistent in stating that there is absolutely no merit to any of the charges against me that have been filed by Mr. Bynum. There was testimony that was taken under oath that was provided. They interviewed Mr. Bynum for almost seven (7) to eight (8) hours. They interviewed Jake Delaplane, Sheilah Miyake, Patrick Henriques, Ian Jung, Ian Costa, and numerous people that they have taken statements from. At this stage of the game, the Summary Judgment Motion is a different standard at what you have at trial. The Summary Judgment Motion is looking in the light most favorable for Tim Bynum, which means all of the evidence will be considered in his favor. Our Attorneys feel confident that we will win this case, even at this stage. Perhaps, if we somehow lose at this stage, we still have the trial and the standard shifts. At that point, he has to prove his case by a much higher percentage. When we look at what we are here for today, I ask all of you that in light of the amount of moneys that Mr. Bynum has cost this County in filing this baseless lawsuit, that he get what he wanted, which is what I wanted. We clearly agree on how we want to proceed on this case. Again, there were articles, numerous files in Hawai'i Civil Beat, Hawai'i Press, The Garden Island, Star Advertiser, and Hawai'i news. They are all here and they are all in this computer, but just taking quotes that were made directly from Mr. Bynum, he claims, "The complaint we are filing speaks for itself and highlights just some of the evidence of abuse," Bynum said. "This blatant abuse of power has lead to the difficult decision to take legal action by filing a Civil Rights Complaint in Federal Court." He said an abuse of power targeted him for purely political reasons and must be resolved through civil action. He also said that he would demonstrate that the criminal complaint I brought against him was baseless and stated, "This Civil Suit is about making individuals," like myself and Sheilah Miyake who he sued individually, "by making individuals be held accountable and in helping to prevent deliberate mistreatment of others by County Officials in the future..." Bronster...

Chair Furfaro:  
minute bell.

Shay, I want you to know that was the six (6)

Ms. Iseri:

Six (6) minutes?

Chair Furfaro:  
summarize.

Yes. I will give you another minute to

Ms. Iseri: Okay. There were numerous things that were stated. Councilmember Bynum claims that his "rights were severely injured and plans to bring everyone involved to justice." Malicious prosecution is a very telling name. Mr. Bynum said he wants his day in court, like I. We are both public officials. I believe the public is entitled to hear all of the truth and to make a decision based on the truth. Clearly, the testimony that was provided by all of the witnesses including Bynum himself shows that the false claims he made were totally unsubstantiated. They are made available as I would suspect that all of you have read through all of those and know the miniscule value that he had in filing

these claims. I am asking that you proceed with the Motions to Dismiss because the public is entitled to hear that. Again, it is surprising that we have a settlement authority coming up at this stage when the settlement conference is not scheduled until March 12, and all of a sudden, we have a Special Council Meeting set here. I hope you hear my concerns and let the public hear the truth because even if the case gets settled, they will hear the truth of all of what was played in Executive Session, which will get released. My Attorneys stand by me in saying that they are fully, well-prepared to proceed with the Motions to Dismiss that is scheduled for Monday. Thank you. Are there any questions?

Chair Furfaro: Thank you, Shay. Rich is going to come up next. There are no questions for you, Shay.

Ms. Iseri: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Richard Wilson.

RICHARD WILSON: Chair and members of the Council...

Chair Furfaro: Rich, I am going to give you your entire six (6) minutes. I will raise my hand when you hit the first three (3) minutes.

Mr. Wilson: I will try to be really to the point. From a procedural standpoint, it is really unusual... this is the first case I have been involved in where there has been settlement negotiations that had not involved the Council who represents the primary Defendant. I, in fact received yesterday, a letter from Mr. Bynum's Counsel telling me essentially that this meeting is moot because they have already essentially engaged in settlement negotiations. It appears as though they have a deal. I am just going to read a portion of it and this is from yesterday, "Dear Mr. Wilson: As you know, the other Defendants in this case, including Defendant Iseri-Carvalho in her official capacity, currently are working toward a settlement of this case." Again, not involve me in any way shape or form... I have made it very, very clear to Mr. Bynum's Counsel that, "You know what, he wanted his day in court. He started the fire; he is going to reap the whirlwind. We are going to go to court. He can prove his case if that is in fact what he thinks he is going to do." "Assuming such settlement is reached, Councilmember Bynum, while not fully compensated, will be satisfied with his compensatory recovery and he will not need to proceed further against Ms. Iseri-Carvalho in her individual capacity. While we continue to believe the strength of our case and while Councilmember Bynum could proceed against Ms. Iseri-Carvalho to recover additional compensatory and punitive damages, Councilmember Bynum will choose to make a discretionary call to end this matter." After the smoke of Ms. Iseri-Carvalho... that Shaylene did these incredibly, horrible, bad things; at the end of the day, it is all about money. This Council has spent... is it three quarters of a million dollars (\$750,000)? Is it half a million dollars (\$500,000)... of County money defending what is a frivolous case. In fact, in all of the discussions that I have had with her Counsel, the words that come up are "*shibai*," "frivolous," and "meritless." Not a single one of the Counsels that represents the other Defendants in their official and individual capacities has ever said, "You know what, this is one of those cases we need to settle and resolve." What you have pending are Motions to Dismiss and Summary Judgment. If they are granted, the case is over. The County may or may not have a right to recoup some of its Attorneys fees in cost. We have a settlement conference set for March 12. At that point in time, we will know what the lay of the land is. There still may be a case; there may not be a case. I can tell you folks this— even if you folks settle this case on behalf of the County... really, it

is blood money. He is one of yours. As you guys know, I am from Kaua'i. I have classmates calling me saying, "It looks a little suspicious. Why is he a Councilmember? He wanted to go to trial. Now they are going to settle because he is on the Council? That looks a little weird." Whether it does or not, that is what is swirling out there. I do not know if your constituents have the faith that they can come and talk to you, but that is what is swirling around. If you folks settle this case, I will tell you that we will not. We will defend this case. We will have Mr. Bynum put his case on. We will defend it and when we prevail, I think there is going to be a lot of questions by your constituents as to why you did that when every single Attorney who is representing your interest has come to you and said, "It is a defensible case. The claims are baseless and meritless." Mr. Bynum wanted his day in court; let us give him his day in court. Mr. Furfaro and members of the Council, thank you very much for your time. Does anyone have any questions?

Chair Furfaro: Rich, we have a question for you from Councilmember Yukimura.

Ms. Yukimura: Is one of the tests of "frivolous" not a Summary Judgment decision? If it is really frivolous, then at Summary Judgment, the Defendant should prevail, right?

Mr. Wilson: Are you using the word "frivolous" as a term of art or are you using "frivolous" in just a regular conversation?

Ms. Yukimura: I am asking based on your definition of your use of "frivolous."

Mr. Wilson: Your question is if it is frivolous, you should prevail in Summary Judgment?

Ms. Yukimura: Yes, I would guess, right?

Mr. Wilson: No, not necessarily.

Ms. Yukimura: There is no case at all.

Mr. Wilson: Not necessarily.

Ms. Yukimura: Okay.

Mr. Wilson: Remember Councilmember Yukimura— I know you are an Attorney also. Summary Judgment, as Shaylene was explaining is that there are certain standards that are different. The movant or the non-moving party in this case would be Mr. Bynum because the County and everybody are saying, "If you take all of these facts, we should prevail." All of the facts and inferences that are read into those facts are in the light most favorable to Mr. Bynum. If there is a single issue of fact on a material point, the court will deny Summary Judgment. That does not mean that the case is not frivolous. It could go to a jury trial, and then the standard becomes his burden of proof. If you are looking at standards, it is not really a question that can be answered in that situation. I can tell you this though, in terms of being frivolous; I sat through his deposition. I do not know if you folks have had the opportunity to read Mr. Bynum's sworn testimony, but the only two (2) complaints that he has against Ms. Iseri-Carvalho are these... there was a meeting and I might get the years wrong...

Ms. Yukimura: I do not need that discussion because if there are facts that are in dispute, that means it is not frivolous until those facts are determined, right?

Mr. Wilson: Well, actually...

Ms. Yukimura: My other question is...

Chair Furfaro: Both of you, I will give you fifteen (15) seconds to wrap up that answer, and then I will allow Councilmember Yukimura to ask one more question.

Mr. Wilson: Thank you.

Chair Furfaro: This period is solely for question and answer, and you need to respond only to the question.

Mr. Wilson: Thank you.

Chair Furfaro: If you can summarize in fifteen (15) seconds, I will give the floor to JoAnn again.

Mr. Wilson: His case is frivolous because his one complaint was that Shaylene was mean to him in a Council Meeting in 2008 and his second complaint was that she actually advised him as his Fifth Amendment right...

Ms. Yukimura: I think that goes into interpretations of what the issues are. If the Summary Judgment motions on the part of the Defendants fail, that means the case will go forward.

Mr. Wilson: That is correct.

Ms. Yukimura: Will settlement levels then not be higher as proposed? They are likely to be higher at a higher cost to the County.

Mr. Wilson: Settlement...

Ms. Yukimura: Yes. If you are talking about taxpayers' expenses, if we do not settle now, then it is possible we will have to settle for more or that it will cost us more in the long run to prosecute the case. It will cost the taxpayers a lot and we could mitigate the costs if we feel that they...

Chair Furfaro: I need a question JoAnn.

Ms. Yukimura: Well, I am asking...

Chair Furfaro: That is an assumption, but go ahead. You stated the question. Rich, can you answer the question about...

Mr. Wilson: I got lost. With all due respect, what is the question?

Chair Furfaro: JoAnn, could you restate the question?



Ms. Yukimura: If the Summary Judgment motions on the part of the Defendants fail and there happens to be actually a substantive reason for the Plaintiffs to prevail; will that not cause huge additional costs to the County?

Mr. Wilson: First, on your question; no, the Plaintiff does not prevail on anything. Number two...

Ms. Yukimura: No, that was not my question.

Mr. Wilson: Number two, no. There is no huge... trial is two (2) months away. Discovery is done; you go to trial. If the County's motions are not granted, it does not change the whole dynamic of this case where all of a sudden, the Plaintiff is saying, "Well, I was going to settle for this, but now I want this." That is not going to happen in this case.

Ms. Yukimura: What is your estimate of the costs to the County to go to trial?

Mr. Wilson: I do not know because the County Attorneys...

Ms. Yukimura: But will it probably not be about half a million dollars (\$500,000) or more?

Mr. Wilson: I really do not know.

Ms. Yukimura: Okay. Thank you very much.

Chair Furfaro: Are there any other questions for Rich?

Mr. Kagawa: Thank you, Rich. In this settlement discussion, basically we are saying that if we settle here, we do not know... we are going to forego finding out what really happened, we are going to pay off all of the Attorneys, and sweep it under the rug. Is that settlement going to include fees for Shay like your hours? Is it going to include fees for Sheilah's Attorneys? Or is the settlement just covering Mr. Bynum and the County's fees? Is that how this works?

Mr. Wilson: Well, the way a settlement would work is that you guys have already paid your Attorneys and you would be basically paying off Mr. Bynum. That is how a settlement works.

Mr. Kagawa: If we settle on this case, we are only settling for one (1) person that was employed by the County. We are not settling for the other people who were employed by the County that also had to hire Attorneys.

Mr. Wilson: Yes, nothing. You just settle... if the County decides to settle before the Summary Judgment is heard, you never get to the truth. We are going to go on no matter what, Mr. Kagawa. We are going to go to trial. In terms of if the County decides to settle, basically the County eats its Attorneys' fees in costs and pays Mr. Bynum this chunk of money, whatever that chunk of money is, then he walks away. He has already offered Shaylene, "Well, If I get my money from the County, I can let you go." We are going to get the truth at trial one way or another. That is what we are going to do.

Mr. Kagawa: Do you want to disclose how much your fees have gone up for Shay? I heard a figure from Sheilah and I do not think I am prevented from disclosing the figure that she told me, but it is fairness. If we are going to settle his Attorney fees and wash everything under the rug, we should pay for Sheilah's and Shay's fees. We only pay for what County employees we want? Is that how we work? In the County Attorney's Office, is that how we do things? That is my question.

Mr. Wilson: I do not know. I do not know how the County works.

Mr. Kagawa: Do you want to disclose Shay's fees amount?

Mr. Wilson: They have been extensive.

Mr. Kagawa: Extensive?

Mr. Wilson: Yes.

Mr. Kagawa: Okay.

Chair Furfaro: Are there any other questions for Rich? If not, thank you for your testimony.

Mr. Wilson: Thank you very much.

Chair Furfaro: I will call the meeting back to order.  
Mr. Hooser, you have the floor.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Hooser: I had a question and the County Attorney can determine if it is not appropriate for open session, but I think it plays into the discussion and I think it is appropriate. It is my understanding that over a certain threshold, the insurance company will then pay additional costs. My question is if the insurance company, as part of their contract, wants the Council to take a certain action, they have some leverage there. I would imagine that they might want us to take an action, let us say a settlement, and then say that they may or may not pay additional costs in the future. They might think in their best interest that a settlement is there regardless of everything else, so that would be part of our decision making because if we went contrary to whatever the insurance company said, then we would be faced with future costs. I am guessing that that is part of the decision-making process. I do not know if the County Attorney can address that.

Chair Furfaro: First of all, I will say to you that I would hope the County Attorney is prepared to answer that if we go into Executive Session, but because there has been this piece of discussion here, I will leave it to the discretion of the County Attorney, and that will be the response that we get for right now. On that note, Mr. Hooser, I will suspend the rules for the County Attorney to come up and allow you to pose your question.

There being no objections, the rules were suspended.

JENNIFER S. WINN, First Deputy County Attorney: Good morning. Deputy County Attorney Jennifer Winn. I will say at this point respectively, Councilmember Hooser, that I am not comfortable in answering any legal questions on the floor at this time. This is part of the purpose of this Executive Session, which is for all of this to be flushed out.

Mr. Hooser: Yes. I understand and respect that. I would not know unless I posed the question.

Chair Furfaro: That is true.

Mr. Hooser: Thank you.

Chair Furfaro: Jennifer, thank you very much. I am going to call our meeting back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura moved to convene in Executive Session for ES-700, seconded by Mr. Hooser.

Chair Furfaro: Can I have the County Attorney up again? I am sorry. I would like the item to be read again before we take our vote.

There being no objections, the rules were suspended.

Ms. Winn: I will read the item.

ES-700 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this Executive Session is to provide the Council with a briefing and request for authority to settle Tim Bynum vs. County of Kaua'i, et al., Civil No. 12-00523 RLP (United States District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Thank you very much. Mr. Kagawa, do you have something to add?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: Yes. I will not be supporting the motion to go into Executive Session. The thing that I keep hearing is that on the eve of such a huge decision, we are asking to go into settlement. It smells like a rat; I think it is a rat. I think we should wait until Summary Judgment and go from there like it was originally planned. I do not know why there was a rapid change all of a sudden and this posting. I do not get it. Thank you.

Chair Furfaro: Jennifer, before I recognize Councilmember Yukimura, the vote for us going into Executive Session would have to be four (4) members?

Ms. Winn: That is correct. You have five (5) members, so you will have to need four (4) members.

Chair Furfaro: Okay. JoAnn, you have the floor.

Ms. Yukimura: I too, think that it is probably not wise to settle prior to Summary Judgment, but I do believe we should have a briefing and discussion about it because it is our responsibility to be kept up-to-date and we should hear from our Attorneys. I would like to go into Executive Session to at least have a discussion.

Chair Furfaro: Mr. Hooser, you have the floor.

Mr. Hooser: Yes, I agree. The only way for us to make intelligent and informed decisions is to meet with our Attorneys and we cannot do that on this matter without going into Executive Session. In order for us to fulfill our responsibilities to the people of Kaua'i, it is important for us to have that discussion. Thank you.

Chair Furfaro: Is there any further discussion before I call for the vote? If not, may I have a roll call vote?

The motion to convene into Executive Session for ES-700 was then put, and carried by the following vote:

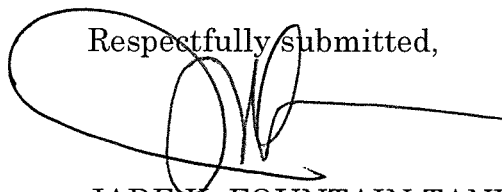
FOR EXECUTIVE SESSION:	Chock, Hooser, Yukimura, Furfaro	TOTAL – 4,
AGAINST EXECUTIVE SESSION:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Furfaro: We will be going into Executive Session here in five (5) minutes. To the Hō'ike people, we will not be coming back, so your duties for today are complete. This would be the end of this public portion.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:17 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

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